

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of           | ) | Case Nos.: <b>11-N-12164-LMA; 11-O-13056</b> |
|                            | ) | (Cons.)                                      |
| <b>HARLAN ROY ANTLER,</b>  | ) |  |
|                            | ) | <b>DECISION AND ORDER OF</b>                 |
| <b>Member No. 166873,</b>  | ) | <b>INVOLUNTARY INACTIVE</b>                  |
|                            | ) | <b>ENROLLMENT</b>                            |
| A Member of the State Bar. | ) |  |

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Respondent Harlan Roy Antler was charged with (1) violating a court order requiring him to comply with California Rules of Court, rule 9.20 and violating rule 9.20(c) of the California Rules of Court; and (2) not complying with all conditions attached to a disciplinary probation. He did not participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85, Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC),

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on December 13, 1993, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On May 31, 2011, the State Bar filed and properly served the NDC in case no. 11-N-12164 on respondent by certified mail, return receipt requested, and by regular mail at his membership records address. A signed return receipt was returned by the U.S. Postal Service to the State Bar on June 3, 2011.

On June 10, 2011, the State Bar filed and properly served the NDC in case no. 11-O-13056 on respondent by certified mail, return receipt requested, and by regular mail at his membership records address. Neither the return receipt nor either envelope containing the NDC was returned to the State Bar. A file-stamped copy of this NDC also was properly served on respondent on July 7, 2011, by certified mail, return receipt requested, and by regular mail at his membership records address. On July 29, 2011, the State Bar received the signed return receipt.

The NDCs in both cases notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

Thereafter, the State Bar attempted to reach respondent by telephone at his official membership records telephone number and at a number respondent used in a prior disciplinary matter. The State Bar also emailed respondent at the email address listed in his membership records.<sup>3</sup>

Respondent did not file a response to the NDCs.<sup>4</sup> On August 1, 2011, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on August 17, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On March 27, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered;

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<sup>3</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

<sup>4</sup> The cases were consolidated by order filed and properly served on July 11, 2011.

(2) respondent has two disciplinary matters pending; (3) respondent has a record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct in this matter. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on April 24, 2012.

Respondent has been disciplined once. Pursuant to a Supreme Court order filed on January 11, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years on conditions including one year's actual suspension. The misconduct involved three client matters. Respondent did not perform competently, respond to reasonable status inquiries or return a client file and unearned fees. He also accepted fees from a nonclient, did not deposit client funds in a client trust account and did not render an accounting to clients. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDCs are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDCs support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

#### **1. Case Number 11-N-12164 (Rule 9.20 Matter)**

Respondent violated California Rules of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) and Business and Professions Code section 6103 (violation of court order) by not filing proof of compliance as required by rule 9.20(c) as ordered by the Supreme Court in its January 2011 order.

**2. Case Number 11-O-13056 (Probation Matter)**

Respondent violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by not complying with the specified conditions attached to the disciplinary probation, including the condition that he arbitrate and make restitution of his former client's claim for \$54,582, ordered by the Supreme Court in its order filed on January 11, 2011.

**Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

(1) the NDCs were properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the NDCs were served on respondent at his membership records address by both certified and regular mail; the State Bar attempted to reach respondent by telephone at two different numbers; and the State Bar emailed respondent at his membership records email address;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Harlan Roy Antler be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Harlan Roy Antler, State Bar number 166873, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June \_\_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court